

REMARKS

This is in response to the Office action mailed November 10, 2009.

The Examiner has rejected claim 31 under 35 U.S.C. §112, first paragraph, for failure to comply with the written description requirement. Specifically, the Examiner states that the claim contains subject matter which was not described in the specification. Applicant respectfully requests that the Examiner reconsider and withdraw the rejection for the reasons set forth hereafter.

Specifically, claim 31 claims:

A pizza without a traditional dough crust consisting essentially of a base layer consisting of flour and cheese and forming a support layer for the remaining ingredients of said pizza;

a layer of cheese on top of said base layer;

a layer of tomato sauce on top of said cheese layer; and

at least one food product layer on top of said layer of tomato sauce, wherein said pizza is lower in carbohydrates than a traditional pizza having a dough crust.

This claim is supported by the specification at, among other places, paragraph 10 which provides that:

The base layer mixture is then placed onto a suitable cooking pan by evenly distributing a pre-measured amount of the formulated flour ... onto the cooking pan and then evenly distributing a pre-measured amount of the cheese on top of the

formulated flour. At least one additional layer selected from the group consisting of pre-measured amounts of cheeses ... may then be added on top of the base layer mixture. A pre-measured amount of tomato sauce may also be added as an at least one additional layer (emphasis added)

Accordingly, claim 31 is supported by the specification.

Withdrawal of the rejection is respectfully requested.

The Examiner has further rejected the claims 11 and 14 under 35 U.S.S. §112, second paragraph, as being indefinite with respect to the claim language "non-liquid ingredients". Applicant respectfully submits that this language is definite. Notwithstanding, applicant has amended the claims to delete this language in order to expedite prosecution of the application and place the application in condition for allowance.

As discussed hereafter, the Examiner has continued the rejection of the claims under 35 U.S.C. §103 as being obvious to one skilled in the art based upon "the article of recipes for 'Crustless Pizza' in view of the Google Group disclosure." Applicant continues to believe that the claims as previously presented are patentable. Notwithstanding, applicant has amended the claims to place them in condition for allowance by indicating, among other things, that the base layer consists of a dry formulated flour mixture and cheese as discussed below. Applicant notes that the

arguments presented hereafter are substantially similar to the arguments previously presented in applicant's July 13, 2009 amendment and are repeated herein for the convenience of the Examiner.

The Examiner has rejected claims 11-14 and 23-36 under 35 U.S.C. §103(a) as being obvious to one skilled in the art at the time of the invention based on the "Lutein of DreamPharm" excerpt articles relying on the recipes for "DEEP DISH PIZZA" and "Low Carb Pizza" in view of the Google Groups' reference to "www.netition.com" "KetoCrust". Applicant respectfully traverses the rejection.

As the Examiner is aware, it is incumbent upon the Examiner to set forth a prima facie case of obviousness. As set forth in the recent Supreme Court decision in KRS Int'l Co. v. Teleflex Inc., 127 S.Ct. 1727, 82 USPQ2d 1385 (2007), the Examiner must set forth what is disclosed in the prior art and compare the disclosure of the prior art to each of the claims which the Examiner has rejected. The Examiner must show why it would be obvious to combine the references relied upon by either showing some suggestion for combining the references within the references themselves or stating why it would be known to one skilled in the art to combine the references. The combined references must disclose the claimed invention. For the reasons set forth hereafter,

applicant respectfully submits that the Examiner has not made a prima facie case of obviousness and the Lutein and Google references do not alone or in combination disclose or suggest applicant's claimed inventions.

Applicant respectfully disagrees with the Examiner's recitation of what is disclosed in the cited references. Therefore, applicant will address the cited references in detail.

The Lutein reference discloses four different recipes for pizzas, namely (1) "Crustless Pizza;" (2) "Diet-Right Pizzas;" (3) "DEEP DISH PIZZA;" and (4) "Low Carb Pizza." The Examiner relies upon the recipes for the Deep Dish Pizza and the Low Carb Pizza as discussed hereafter.

The Deep Dish Pizza disclosure is as follows:

DEEP DISH PIZZA

Ingredients:

4 oz. cream cheese
3 eggs
1/3 cup cream
1/4 cup grated Parmesan cheese
1/2 tsp. oregano
1/4 tsp. garlic powder 2 cups shredded mixed Italian cheese
1/2 cup low-carb (no sugar added) pizza sauce
1 cup shredded mozzarella

Pizza toppings of your choice: pepperoni, ham, green onion, green pepper, mushrooms, bacon, browned sausage or seasoned ground beef, additional parmesan.

How to prepare:

Preheat oven to 375 degrees. Beat together cream cheese and eggs until smooth; add cream, parmesan, and spices and mix

again. Oil oblong casserole dish with olive oil or spray with PAM; sprinkle the Italian cheeses over the bottom of the dish and pour the egg mixture over. Bake for about 15 minutes; allow to stand for 5 minutes. Spread on pizza sauce, sprinkle mozzarella, and pile on your favorite toppings. Sprinkle with more Parmesan if desired. Return to oven and bake until bubble and browning. Allow to stand for 10 more minutes before cutting.

Accordingly, the crust of the Deep Dish Pizza consists of the Italian cheeses sprinkled over the bottom of the casserole dish upon which the liquid egg mixture is poured. The liquid egg mixture consists of beating together cream cheese and eggs until smooth, and adding cream, parmesan, and spices and mixing again. Thereafter, the base layer is cooked for 15 minutes. The sauce is then spread on the base layer and other toppings provided thereon. Thus, the base layer comprises Italian cheese and the liquid mixture of cream cheese, eggs, cream, parmesan and spices.

The Low Carb Pizza cited by the Examiner is as follows:

Low Carb Pizza

Here's a dish that can stave off a pizza craving for low carb dieters or those who need to avoid wheat products. Zucchini or spaghetti squash work equally well for this crust, with spaghetti squash providing a somewhat sweeter flavor. Bake this in a traditional 9" pie pan, not a pizza pan.

This is a vegetarian recipe, but you could easily add whatever pizza toppings are your favorites, including pepperoni or sausage or other veggies.

3 cups grated raw zucchini
OR

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3 cups cooked spaghetti squash
2 eggs, beaten
2 1/2 cups mozzarella cheese
1 1/2 cups tomato sauce
1/2 small onion, thinly sliced
1 small green bell pepper, chopped
1/2 cup sliced mushrooms
1/4 cup sliced black olives
1/2 cup grated Parmesan cheese
1 tsp. dried oregano
1 tsp. dried basil
1 Tbsp. olive oil

Serves 3-4. Preheat oven to 400F. Squeeze the excess moisture out of the grated zucchini or cooked spaghetti squash with paper towels. Mix the squash, eggs and 1 1/2 cups mozzarella together and press into the bottom of a pie pan. Bake for about 10 minutes. Remove the pan from the oven and spread the tomato sauce, vegetables or other pizza toppings and the remaining cheeses over the crust. Sprinkle with oregano and basil and drizzle the olive oil over the top. Bake for 25 minutes or until cheese is lightly browned.

Accordingly, this pizza has a pizza crust of either zucchini or spaghetti squash mixed with eggs and mozzarella.

The Google Groups' reference disclosure is minimal and states as follows:

www.netrition.com has KetoCrust which is a **low carb pizza crust**. It's tolerable, and a little on the spendy side. There are recipes for **low carb** crusts that use a little flour and some whey protein in a cook book I bought, but I haven't tried them, so I hesitate to recommend them right now.

(original emphasis) Accordingly, this reference apparently teaches a conventional pizza crust that uses, apparently, among other things, "a little flour and some whey protein." There is no disclosure as to what constitutes "a little" or

what other ingredients are in the "cook book I bought" or how the pizza is made.

Notwithstanding the minimal disclosure of the Google Groups' reference, a combination of the Deep Dish Pizza recipe and the Google Groups' disclosure would provide for the following recipe:

1. Beat together cream cheese and eggs until smooth, add cream, parmesan, spices and a little flour and some whey protein, and mix again.
2. Oil oblong casserole dish with olive oil or spray with PAM;
3. sprinkle the Italian cheeses over the bottom of the dish and pour the liquid egg mixture over.
4. Bake for about 15 minutes; allow to stand for 5 minutes.
5. Spread on pizza sauce, sprinkle mozzarella, and pile on your favorite toppings.
6. Sprinkle with more Parmesan if desired.
7. Return to oven and bake until bubble and browning.
8. Allow to stand for 10 more minutes before cutting.

A combination of the Low Carb Pizza and Google Groups' disclosure would be as follows:

1. Preheat oven to 400°F.
2. Squeeze the excess moisture out of the grated zucchini or cooked spaghetti squash with paper towels.

3. Mix the squash, eggs, 1 1/2 cups mozzarella and a little flour and some whey protein together and press into the bottom of a pie pan.
4. Bake for about 10 minutes.
5. Remove the pan from the oven and spread the tomato sauce, vegetables or other pizza toppings and the remaining cheeses over the crust.
6. Sprinkle with oregano and basil and drizzle the olive oil over the top.
7. Bake for 25 minutes or until cheese is lightly browned.

As seen hereafter, these combinations of references do not disclose applicant's claimed inventions.

Independent claim 11 claims as follows:

11. A crustless pizza without a traditional dough crust layer comprising:

a base layer consisting of a dry formulated flour mixture and cheese; and

at least one food layer on top of said base layer, wherein said crustless pizza is lower in carbohydrates than a non-crustless pizza having a dough crust.

This claim is specifically directed to pizzas not having a traditional pizza crust. The claim requires a base layer consisting of a dry formulated flour mixture and cheese. As seen above, the Deep Dish Pizza Recipe in combination with the Google Groups' reference does not teach these limitations. The Deep Dish Pizza when combined with the Google Group provides for a liquid mixture including cream

and beaten eggs poured over the cheeses. This is contrary to the teaching of the invention of claim 11.

Further, claim 11 requires a base layer consisting of a dry formulated flour mixture and cheese. With respect to claim 11, the Deep Dish Pizza reference when combined with the Google Groups' reference does not teach a base layer of a dry formulated flour mixture and cheese. Rather, it teaches a base layer of cheese and a liquid mixture including cream and beaten eggs. The ingredients of the Deep Dish Pizza of eggs, cream and cream cheese are different from the claimed base layer of applicant's claimed invention.

Applicant respectfully requests that the Examiner reconsider and withdraw the rejections of independent claim 11 on the grounds that the cited references do not teach one skilled in the art applicant's claimed inventions. For at least these same reasons, the rejection of dependent claims 12-15 must be withdrawn.

Claims 27-36 are similar to claim 11 and, in fact, are more detailed in defining applicant's invention. Accordingly, the cited references do not disclose or suggest these claims.

Independent claim 22 claims the following method:

22. A method of making a crustless pizza without a

traditional dough crust layer comprising the following sequence of steps:

preparing a dry formulated flour mixture consisting of a high gluten flour and a baking powder;

distributing a pre-measured amount of said dry formulated flour mixture evenly onto a cooking pan;

distributing a pre-measured amount of a cheese evenly over said dry formulated flour mixture, wherein said dry formulated flour mixture and said cheese form a base layer;

distributing a pre-measured amount of a pizza sauce or a tomato sauce evenly over and on top of said base layer;

adding and distributing evenly a pre-measured amount of at least one food layer over and on top of said pizza sauce or said tomato sauce; and

baking said crustless pizza for a suitable time and at a suitable temperature, wherein said crustless pizza is lower in carbohydrates than a non-crustless pizza having a dough crust.

This claim claims a method following a specific sequence of steps. As discussed more specifically hereafter, the sequence of steps are not disclosed in the Deep Dish Pizza recipe when combined with the Google Groups' reference as set forth above at pages 21-22. Thus, for example, this combination of references does not disclose first preparing a dry formulated flour mixture comprising a high gluten flour and baking powder. Rather, the combination of references cited by the Examiner disclose sprinkling Italian cheese over the bottom of a casserole dish and pouring the liquid egg mixture of cream, beaten eggs, cream cheese,

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parmesan, spices and a little flour and some whey protein onto the Italian cheeses and then baking the mixture. Thereafter, pizza sauce and other toppings are added. In the claimed method, the base layer is the dry formulated flour mixture and cheese. Accordingly, the method of claim 22 is not disclosed by the combination of the Deep Dish Pizza recipe and the Google Groups' recipe.

For the foregoing reasons, the method claimed in claim 22 would not have been obvious to one skilled in the art in view of the cited references. Reconsideration and withdrawal of the rejection is respectfully requested. Similarly, dependent claims 23-26 are allowable.

Reconsideration and allowance of the claims is respectfully requested.

Respectfully submitted,

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